

Philip J. Macres
Direct Phone: (202) 373-6770
Direct Fax: (202) 424-7647
philip.macres@bingham.com
Our File No.: 4128840089

VIA ECFS

Bingham McCutchen LLP
Suite 300
3000 K Street NW
Washington, DC
20007-5116

202.424.7500
202.424.7647 fax

bingham.com

Boston
Hartford
London
Los Angeles
New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

June 15, 2006

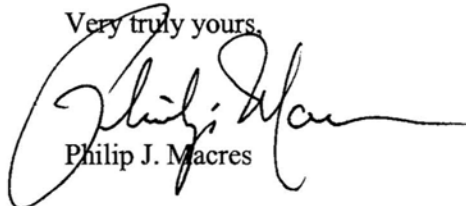
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

Re: WC Docket No.: 05-170 - Ex Parte

Dear Secretary Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on June 14, 2006, Patrick Donovan and the undersigned, on behalf of Eureka Telecom, Inc. d/b/a InfoHighway Communications, McLeodUSA, Inc., Mpower Communications Corp., PacWest Telecomm, Inc., TDS Metrocom, LLC and US LEC Corp. met with Scott Deutchman, Legal Advisor to Commissioner Copps; Ian Dillner, Legal Advisor to Commissioner Tate; and Scott Bergmann, Legal Advisor to Commissioner Adelstein. During these meetings, we urged that the Petition for Forbearance being considered in the above-referenced proceeding be granted. We presented the views set forth in the attached document that was provided at the meetings and made points consistent with the September 12, 2005 comments that we filed on behalf of these CLECs in this proceeding.

Very truly yours,



Philip J. Macres

Attachment

cc: S. Bergmann (all via E-mail)
S. Deutchman
I. Dillner

Forbearance is Appropriate

- The Petition does not ask the Commission to change its impairment findings.
- The Petition does not require the Commission to establish a new unbundling obligations but rather to lift certain limitations that apply where impairment exists.
- In the *Omaha Order*, the Commission rejected proposals that it interpret and apply the § 251(c)(3) impairment standard to its forbearance analysis.

EEL Service Eligibility Criteria

- The EEL eligibility criteria are unnecessary because the *TRRO* prohibits UNEs from being used for the exclusive provision of IXC and wireless services.
- The SBC/AT&T/BellSouth and Verizon/MCI mergers have eliminated any substantial concern about conversion by IXCs of special access to UNEs.
- Forbearance from application of the EEL criteria does not impact the impairment analysis performed for loop and transport UNEs

DS1 Transport Cap

- The cap was not established based on an impairment analysis.
 - The Commission did not find that CLECs are “non-impaired” without access above 10 DS1s on transport routes where DS3 UNEs are available.
- DS1 dedicated transport UNEs are generally combined with DS1 loops as EEL combinations and therefore, CLECs can only offer 10 EELs to all of the buildings served by a wire center because the transport route going back to the CLECs switch would be exhausted at 10.

DS1 Loop Test

- The Commission found DS1 impairment based on the number of fiber-based collocators and business lines.
- Petitions are seeking to lift the impairment limitation.
- The Commission may use forbearance to, at a minimum, refine the availability of DS1 UNE loops.
- Under the *TRO*, no such limitations existed for DS1 loops as there was a national finding of impairment for such facilities.